

**APR 26 2010**

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Montana State Auditor  
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Attorney for Securities and Insurance Departments

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE  
OFFICE OF THE STATE AUDITOR  
STATE OF MONTANA

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IN THE MATTER OF:	)	CASE NO. INS-2009-93
	)	
NICOLE SIBLEY	)	NOTICE OF PROPOSED AGENCY
in her capacity as a licensed insurance	)	DISCIPLINARY ACTION
producer, License # 704887,	)	AND OPPORTUNITY FOR HEARING.
	)	
BRANDON FRENCH	)	
Individually,	)	
Respondents.	)	

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Staff of the Insurance Department (Department) of the office of the State Auditor as Commissioner of Securities and Insurance of the state of Montana (Commissioner), pursuant to the authority of the Insurance Code of Montana, Mont. Code Ann. § 33-1-101, *et seq.*, is proposing to the Commissioner that she take specific action against NICOLE SIBLEY (Sibley), a licensed insurance producer, and BRANDON FRENCH (French) for violations of the Montana Insurance Code (Insurance Code). The Commissioner has authority to take such action under the provisions of Mont. Code Ann. §§ 33-1-102, 33-1-301, 33-1-311, 33-1-315, 33-1-317, 33-1-318, 33-1-1202, 33-17-214 (6) (a), 33-17-1001 (1) (c) and (f).

In particular, the Department recommends specific action against Sibley, including imposition of appropriate fines, order to pay restitution and suspension or revocation of Sibley's producer's license. Additionally, the Department recommends specific action against French, including imposition of appropriate fines and an order to pay restitution.

Service of process is pursuant to Mont. Code Ann. § 33-1-314.

### **REASONS FOR ACTION**

There is probable cause to believe that the following facts, if true, justify and support such specific action. Furthermore, there is reason to believe that the following facts will be proven true and, therefore, justify and support immediate issuance of an order requiring Respondents to cease and desist their activities in violation of the Insurance Code.

### **ALLEGATIONS OF FACT**

1. Sibley is a licensed insurance producer, license number 704887, and has been licensed since September 25, 2006.
2. Sibley was appointed with State Farm beginning on or about October 6, 2008. Sibley's appointment with State Farm terminated on or about September 24, 2009.
3. French is a farmer and contract fence builder living in Medicine Lake, Montana.
4. On or about May 1, 2009, the Department received a complaint from State Farm Insurance Company (State Farm) alleging Sibley had submitted a fraudulent insurance claim regarding an accident involving a car owned by her mother. The car was allegedly driven by French, Sibley's boyfriend and father of her child, when the accident occurred. The claim is against French's insurance policy, but Sibley and her mother are the parties who would benefit were the claim paid.

3. Investigator Catrina Higgins (Higgins) investigated this matter. Pursuant to standard investigation procedures, Higgins obtained a copy of State Farm's claims file relevant to the claim. Higgins also spoke with French and Sibley, as well as State Farm's fraud investigator, Kirk Linse (Linse).

4. Higgins' investigation indicates Sibley filed the claim against French's policy with an inaccurate date for the accident. The claim indicated the date of loss as March 27, 2009. However, it appears the second repair shop to inspect the vehicle after the accident saw it on March 6, 2009, three weeks prior to the alleged accident. On or about May 1, 2009 Linse taped interview his interview of Sibley during which Sibley admitted she "picked the day out of the air" for when the accident allegedly occurred. Interview transcript, page 13. She further indicated to Linse that her standard practice is to file claims with dates she "picked out of the air." Id. In an interview conducted by State Farm representative Eric Rude on or about April 24, 2009, French indicated the accident occurred on March 27, 2009. Interview transcript page 2. French then threatened Linse he would obtain an attorney to force State Farm to pay the claim.

5. Additionally, the mechanics who viewed the damage to the fuse box indicated they did not know how the damage could have been caused by the accident as it was described by Sibley and/or French. It also appeared either French or Sibley asked one repair shop to alter the date on the repair order for the vehicle in question.

### **CONCLUSIONS OF LAW**

1. The Commissioner has jurisdiction over this matter pursuant to Mont. Code Ann. § 33-1-101, *et seq.*

2. Pursuant to Mont. Code Ann. § 33-1-1202 (1), a person commits the act of insurance fraud when the person presents an insurer a written statement containing false



information concerning any fact as part of a claim for payment, for the purpose of obtaining money.

3. Pursuant to Mont. Code Ann. § 33-1-1202 (2), a person commits the act of insurance fraud when the person assists, abets, solicits, or conspires with another to make any written or oral statement, containing false, incomplete, or misleading information concerning any fact or thing material to support of a claim for payment or other benefit pursuant to an insurance policy.

4. Sibley violated Mont. Code Ann. § 33-1-1202 (1) by submitting claims to State Farm that contained false information, including a false date of loss and false information as to the state of the car as a result of the claimed accident for the purpose of obtaining the benefit of having the expenses paid for repairing the car she relied upon for transportation.

5. French violated Mont. Code Ann. § 33-1-1202 (2) by assisting and abetting Sibley in her false claim to State Farm by providing incomplete, false or misleading information in support of the claim.

6. Pursuant to Mont. Code Ann. § 33-17-1001 (1) (c), the Commissioner may suspend or revoke an insurance producer's license when that person violates a provision of the Insurance Code.

7. Pursuant to Mont. Code Ann. § 33-17-1001 (1) (f), the Commissioner may suspend or revoke an insurance producer's license when that person in conduct of the affairs under her license uses fraudulent practices or is untrustworthy or a source of loss and injury to the public.

8. Sibley violated Mont. Code Ann. § 33-17-1001 (1) (c) and (f) by violating the provisions of the Insurance Code found in Mont. Code Ann. § 33-1-1202 (1), showing

Respondent uses fraudulent practices, is untrustworthy and is a source of loss and injury to the public.

### **PUBLIC INTEREST**

For any and all of the reasons set forth above, it is in the public interest and will protect Montana insurance consumers to:

1. immediately issue a cease and desist order barring Sibley and French from further violations of the Montana Insurance Code;
2. order Sibley and French to pay an administrative fine in an amount and upon such terms and conditions as supported by the evidence and determined at a hearing of this matter;
3. order Sibley and French to pay restitution in amount and upon such terms and conditions as supported by the evidence and determined at a hearing of this matter;
4. suspend or revoke Sibley's insurance producer's license; and
5. take such other actions which may be in the public interest and necessary and appropriate for the protection of Montana insurance consumers.

### **RELIEF REQUESTED**

WHEREFORE, the Department seeks the following relief:

1. pursuant to Mont. Code Ann. § 33-1-318, issuance of a temporary cease and desist order;
2. pursuant to Mont. Code Ann. §§ 33-1-317 and 33-1-1211, imposition of a fine not to exceed \$5,000 for each violation of the Insurance Code committed by Sibley;
3. pursuant to Mont. Code Ann. §§ 33-1-317 and 33-1-1211, imposition of a fine not to exceed \$25,000 for each violation of the Insurance Code committed by French;

4. pursuant to Mont. Code Ann. § 33-1-1211 (3), require restitution be paid to the insurer for the amounts obtained by insurance fraud;

4. pursuant to Mont. Code Ann. § 33-17-1001, suspension or revocation of Sibley's insurance producer's license;

5. a finding that all sanctions and remedies detailed and described here are in the public interest and necessary for the protection of Montana insurance consumers; and

6. any further action as deemed just and appropriate for the protection of Montana insurance consumers.

### **STATEMENT OF RIGHTS**

You are entitled to a hearing to respond to this notice, present evidence and arguments on all issues involved in this case. You have a right to be represented by an attorney at any and all stages of this proceeding. You may demand a formal hearing before a hearing examiner appointed by the Commissioner pursuant to the Montana Administrative Procedure Act, Mont. Code Ann. § 2-4-601, *et seq.*, including § 2-4-631. If you demand a hearing, you will be given notice of the time, place and the nature of the hearing.

If you want to contest the proposed action under the jurisdiction of the Commissioner, you must advise the Commissioner within 15 days of the date you receive this notice. You must advise the Commissioner of your intent to contest the proposed action by writing to Roberta Cross Guns, State Auditor's Office, 840 Helena Avenue, Helena, Montana 59601. Your letter must clearly indicate whether you demand a hearing, or whether you waive formal proceedings and, if so, what informal proceedings you prefer for disposition of this case. Pursuant to Mont. Code Ann. § 2-4-603(2), you may not request to proceed informally if the action could result in suspension, revocation or any other adverse action against a professional license. Should you



request a hearing on the matters raised in this Notice, a hearing must be held within 45 days of the request, unless postponed by mutual consent of the parties, pursuant to Mont. Code Ann. § 33-1-701 (2).

Should you request a hearing, you have the right to be accompanied, represented, and advised by counsel. If the counsel you choose has not been admitted to practice law in the state of Montana, he or she must comply with the requirements of *Application of American Smelting and Refining Co.*, 164 Mont. 139, 520 P.2d 103 (1973), and *Montana Supreme Court Comm'n on the Unauthorized Practice of Law v. O'Neil*, 2006 MT 284, 334 Mont. 311, 147 P.3d 200.


#### **CONTACT WITH SECURITIES COMMISSIONER'S OFFICE**

If you have questions or wish to discuss this matter, please contact Roberta Cross Guns, legal counsel for the Insurance Department, at 840 Helena Avenue, Helena, MT, 59601, (406) 444-2040 or, within Montana, (800) 332-6148. If an attorney represents you, please make any contacts with this office through your attorney.

#### **POSSIBILITY OF DEFAULT**

Failure to give notice or to advise of your demand for a hearing or informal procedure within 15 days will result in the entry of a default order imposing the disciplinary sanctions against you and your license without further notice to you, pursuant to Mont. Admin. R. 6.2.101, and the Attorney General's Model Rule 10, Mont. Admin. R. 1.3.214.

DATED this 26<sup>th</sup> day of April, 2010.

  
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Roberta Cross Guns  
Attorney for Insurance Department

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served on the 26<sup>th</sup> day of April, 2010, by US mail, certified, first-class postage paid, to the following:

Brandon French  
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